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No. 85-937

In the Supreme Court of the United States

OCTOBER TERM, 1986

STATE OF WEST VIRGINIA, PETITIONER

v.

UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF FOR THE UNITED STATES

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QUESTION PRESENTED

Whether the court of appeals erred in awarding prejudgment interest on petitioner's contractual obligation.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. D1-D25) is reported at 764 F.2d 1028. The opinion of the district court on petitioner's motion to dismiss and the government's cross-motion for summary judgment (Pet. App. A1-A51) is reported at 537 F. Supp. 388. The opinions of the district court on liability (Pet. App. B1-B75) and prejudgment interest (Pet. App. C1-C30) are unreported.

JURISDICTION

The judgment of the court of appeals was entered on June 21, 1985. A petition for rehearing was

denied on July 31, 1985 (Pet. App. E1-E3). On October 25, 1985, the Chief Justice extended the time for filing a petition for a writ of certiorari to and including November 28, 1985, a national holiday (Pet. App. F1). The petition was filed on November 29, 1985, and was granted on February 24, 1986, limited to the second question presented. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).[1]

STATUTE INVOLVED

Section 226(a) of the Disaster Relief Act of 1970, Pub. L. No. 91-606, 84 Stat. 1751-1752, repealed in part by Pub. L. No. 93-288, § 603, 88 Stat. 164, provided in relevant part:

> The Director [of the Office of Emergency Preparedness] is authorized to provide temporary housing or other emergency shelter, including, but not limited to, mobile homes or other readily fabricated dwellings for those who, as a result of [a] major disaster, require temporary housing or other emergency shelter * * *. Any mobile home or readily fabricated dwelling shall be placed on a site complete with utilities provided by State or local government, or by the owner or occupant of the site who was displaced

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[1] Petitioner also erroneously invokes this Court's original jurisdiction (Br. 2-3). While this Court has original jurisdiction over controversies between the United States and a State (see 28 U.S.C. 1251(b)), that jurisdiction is not exclusive. Under 28 U.S.C. 1345, the federal district courts also have jurisdiction to entertain suits brought by the United States against a State. See, *e.g.*, *United States* v. *California*, 328 F.2d 729 (9th Cir.), cert. denied, 379 U.S. 817 (1964). The United States brought this suit in the district court, and the case is now before this Court on a writ of certiorari to the court of appeals.

> by the major disaster, without charge to the United States. However, the Director may elect to provide other more economical and accessible sites at Federal expense when he determines such action to be in the public interest.

STATEMENT

1. The Disaster Relief Act of 1970 (the Act), Pub. L. No. 91-606, 84 Stat. 1744 *et seq.*, repealed in part by Pub. L. No. 93-288, § 603, 88 Stat. 164, made provision for the federal government to provide assistance "to State and local governments in carrying out their responsibilities to alleviate the suffering and damage which result from * * * disasters" (§ 101 (b), 84 Stat. 1745). The remedial provisions of the Act were triggered by a Presidential declaration of a "major disaster" (§ 201(a), 84 Stat. 1746). Once triggered, the Act authorized federal authorities to provide, among other things, temporary housing or other emergency shelter to those left homeless by a disaster.

Except in circumstances not relevant here, these temporary dwellings were to be provided by federal authorities and installed at sites prepared by the concerned state or local government.[2] Section 226(a) of the Act (84 Stat. 1752 (emphasis added)) thus stated:

> Any mobile home or readily fabricated dwelling shall be placed on a site complete with utilities provided by State or local government * * * *without charge to the United States.* However, the Director [of the Office of Emergency Pre-

[2] The Act also made provision for the sites to be provided and prepared by "the owner or occupant of the site who was displaced by the major disaster" (§ 226(a), 84 Stat. 1752).

> paredness] may elect to provide other more economical and accessible sites at Federal expense when he determines such action to be in the public interest.

To further the legislative scheme, regulations implementing Section 226(a) also provided that "[a]ny mobile home or readily fabricated dwelling shall be placed on a developed site, complete with necessary improvements and utilities to the location of each such dwelling as provided without charge to the Federal Government by State or local government." The regulations also indicated that "the Federal responsibility shall be limited to connection costs to the furnished utilities," and that "[f]ailure to provide such facilities on sites proposed for use by owners or occupants, shall constitute a basis for rejection of such sites." 32 C.F.R. 1710.13(c)(5) (1973). More generally, the regulations promulgated under the Act obligated the concerned State to enter into an agreement with the Federal Government offering assurances that "a reasonable amount of the funds of the State * * * will be expended in alleviating damage caused by the disaster." 32 C.F.R. 1710.7(a) (1973).

2. a. On February 26, 1972, heavy rains caused a coal waste dam to fail near Mann, West Virginia, leading to severe flooding of the Buffalo Creek. More than 100 people died in the disaster, and thousands were left homeless. Pet. App. B4, D2. That same day, West Virginia's Governor, Arch A. Moore, Jr., requested disaster assistance from the federal government. President Nixon responded favorably, declaring the "Buffalo Creek Disaster" a "major disaster" within the meaning of the Act. *Id.* at B5-B6. Representatives of the United States Army Corps of Engineers (the Corps) immediately began discussions

with Governor Moore and other state officials about the appropriate federal and state response to the damage caused by the flooding (*id.* at B10-B11); in accordance with the division of responsibilities mandated by the Act, Governor Moore issued a statement to the press indicating that the Federal Government would supply trailer homes, and that the State would prepare sites and provide electricity for the homes (C.A. App. 280).

It soon became apparent, however, that the State would be unable to prepare sites for the shelters, as required by the Act (C.A. App. 815-816, 907, 912, 933-936). On February 28 or 29, 1972, Governor Moore accordingly requested the Corps to perform the site preparation work (Pet. App. B46, B49-B50). This request was confirmed in a March 1, 1972 letter to the Corps from John M. Gates, the State Commissioner of Finance and Administration and the Director of the State's Office of Emergency Planning, which acknowledged that, "[a]s [site preparation] is the State's responsibility, this office will be responsible for costs incurred for this assignment" (*id.* at B14-B16 & n.2, D6-D7). Two days later, Gates sent the Corps a virtually identical letter requesting site preparation at another location and acknowledging the State's financial responsibility for the work (*id.* at B18).

On March 4, 1972, Governor Moore signed a federal-state disaster assistance agreement, which certified that Gates was authorized to execute all necessary documents relating to disaster relief (Pet. App. B17-B18). In the weeks following execution of the agreement, Gates sent the Corps nine additional requests for site preparation work, all but one of which explicitly acknowledged the State's responsibility for the costs incurred by the Corps (*id.* at B18-B19).

The Corps completed the work requested by the State in approximately two months. In all, the Corps prepared 617 mobile home sites at 11 locations, along with utility hookups, interior roads, and access bridges. Gates subsequently certified that the work had been performed satisfactorily. Pet. App. B20, D7.

b. In late August 1972, West Virginia was again struck by heavy rains and flooding. Although no lives were lost in this so-called "Gilbert Creek Disaster," many persons were left homeless. On August 20, 1972, Governor Moore again asked President Nixon to provide disaster relief; President Nixon again responded favorably, declaring the Gilbert Creek Disaster a "major disaster" within the meaning of the Act. Pet. App. B22-B23, D7.

On August 24, 1972, Charles Steele, a special assistant to the Governor and the State's Coordinating Officer for the Gilbert Creek Disaster, asked the Corps to prepare a mobile home site. Like the letters sent to the Corps in connection with the Buffalo Creek Disaster, this request acknowledged the State's responsibility for the costs incurred by the Corps. Pet. App. B23-B24, B68 & n.11. Shortly afterwards, Gates—still the State's Commissioner of Finance and Administration and Director of the State's Office of Emergency Preparedness—also sent the Corps a letter, requesting preparation work at another site and again acknowledging the State's financial responsibility (*id.* at B25-B26, B69). The Corps subsequently performed the requested work (*id.* at D8).

3. In late 1972 and 1973, the Corps duly billed the State $3,708,412.62 for work performed in connection with the Buffalo Creek Disaster and $633,377.41 for work performed after the Gilbert Creek Disaster (Pet. App. D7, D8). During the years that followed,

the State never denied that the work had been performed satisfactorily or contested the amount sought by the Corps; to the contrary, Governor Moore acknowledged the debt, and appeared to be taking steps towards its payment (*id.* at B26-B28). When payment was not forthcoming after five years, however, the United States brought this action in the United States District Court for the Southern District of West Virginia, seeking to recover $4,341,790.03.

In a preliminary opinion resolving pretrial motions, the district court found jurisdiction to entertain the suit under 28 U.S.C. 1345, rejecting the State's assertion that its sovereign immunity was a bar to actions brought by the United States (Pet. App. A11-A23). The court also held that federal law should control the disposition of the suit, both because the controversy involved a dispute between the United States and a State (*id.* at A23-A25) and because "the action involves a federal program" (*id.* at A25) whose uniform nationwide application was "essential" (*id.* at A33). The court declined to award summary judgment to either side, however, finding that material facts were in dispute (*id.* at A37-A42).

After trial, the district court found the State liable for the disputed site preparation costs (Pet. App. B1-B75), ruling that West Virginia was contractually obligated to reimburse the United States for the amounts expended by the Corps. The court first rejected the State's contention that Governor Moore and his delegates could have committed the State to reimburse the Corps only by resorting to the State's normal procurement process (*id.* at B29-B35).[3] The court then held as a factual matter that

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[3] The district court found it "inconceivable * * * that before such work could have begun competitive bids would have been required, detailed written contracts executed, and the ap-

the State had requested the assistance of the Corps, and in doing so had obligated itself to pay the expenses incurred by the United States in combatting both the Buffalo and the Gilbert Creek Disasters (*id.* at B35-B56, B67-B73). Alternatively, the court held that the State had accepted liability by ratifying the work done by the Corps (*id.* at B56-B67, B73-B75).

In a separate opinion, however, the district court denied the United States' request for $5,783,098.09 in prejudgment interest (Pet. App. C1-C30). As a preliminary matter, the court again held "that federal law, not state law, governs the right of the United States to such interest" (*id.* at C9). And the court acknowledged that an award of prejudgment interest ordinarily is appropriate when the "obligation is * * * a debt" (*id.* at C24). The court found the application of this principle improper here, however, "in light of [petitioner's] sovereign status" (*id.* at C27). Instead, the court concluded that it "should examine the Congressional purpose underlying the statutory enactment and the relative equities between the parties to the obligation in determining whether an award of interest is appropriate" (*id.* at C17). After making this inquiry, the court concluded that, "[a]s between the citizens of West Virginia and all the citizens of the United States, it appears more equitable to have the latter share in the defraying of the costs of the services rendered by the United States Army Corps of Engineers" (*id.* at C29-C30).[4]

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proval of no less than three State officials obtained" (Pet. App. B32-B33).

[4] The court found that the primary purpose of the Act was to provide relief to the victims of natural disasters (Pet. App. C27-C28). Against that background, the court held that the

4. The court of appeals reversed the district court's ruling on interest, holding the State liable for prejudgment interest from the date that the Corps initially presented it with itemized bills (Pet. App. D1-D25).[5] Like the district court, the court of appeals first held that federal law is controlling (*id.* at D10-D11). And "[u]nder the federal rule," the court of appeals explained, "interest is allowable as a matter of right for a breach of contract to pay when the amount due has been liquidated, ascertained, or agreed to" (*id.* at D11 (footnote omitted)).

Alternatively, the court of appeals held that the State should be liable for interest even under the balancing of the equities test applied by the district court.[6] The court of appeals noted that the United States had spent more than $30 million in the wake of the Buffalo and Gilbert Creek Disasters, "several times more than the State of West Virginia agreed to pay" (Pet. App. D19). The court also explained that "Congress itself engaged in certain equitable

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equities favored the State, explaining that the State had not incurred its obligations through "a truly 'voluntary' act" (*id.* at C28) and that an award of interest "would provide an additional and unwarranted burden or penalty on people who have suffered enough" (*id.* at C29).

[5] The court of appeals affirmed the district court's holding that the State was bound by its contract (Pet. App. D9-D10). This Court limited its grant of certiorari to exclude the State's challenge to that holding.

[6] The court of appeals noted the State's concession that it did not " 'enjoy[] absolute immunity from prejudgment interest' "; the State instead argued that " 'federal courts are permitted, at least within the context of a major disaster, to exercise discretion on whether or not to award prejudgment interest against a state which has not expressly agreed to pay it' " (Pet. App. D17).

balancing of the costs of disaster relief as between the federal government and the state government concerned by establishing a formula for distributing such costs," concluding that "it is not within the province of the courts to establish a different formula for the distribution of costs" (*id.* at D19-D20). And the court noted that the State itself had "recognized its responsibility and liability in this matter" (*id.* at D20). In these circumstances, the court held that, "[i]f the right to prejudgment interest depends on a balancing of equities, it is manifest beyond any doubt that the equities weigh overwhelmingly in favor of the United States" (*id.* at D22).

The court added that its conclusion was not inconsistent with principles of federalism. To the contrary, the court held that "federalism would be thwarted by a denial of the use of the normal incidents of suit in connection with the breach of an agreement between two sovereigns" (Pet. App. D22). "[W]here there was clear jurisdiction and implied consent to suit," the court concluded, "it would seem elementary that a court, in adjudicating the rights of the parties, has the power to enter a decree and judgment with the usual incidents such as the recovery of prejudgment interest" (*id.* at D23-D24).

SUMMARY OF ARGUMENT

It is beyond dispute that the interpretation of contracts to which the United States is a party is a matter of federal law. It is equally well-established that the availability of prejudgment interest in contract actions brought by the United States generally is determined by the application of federal rules, rather than through the incorporation into federal law of the state rule of decision. The question here is whether this otherwise general principle is wholly

inapplicable—and thus whether state immunity law must provide the federal rule of decision—when the defendant in the Federal Government's contract action is a State. Answering this question turns on an application of the doctrine first formulated in *Clearfield Trust Co.* v. *United States*, 318 U.S. 363 (1943), which sets out the criteria that must be taken into account in determining whether federal courts should borrow state standards rather than develop their own rules in cases governed by federal law.

1. Here, the first set of *Clearfield Trust* considerations—the frustration of federal policy that would follow from the application of state law—is dispositive. The Disaster Relief Act did not obligate the United States to shoulder the entire financial burden of combatting a disaster; to the contrary, the Act clearly divided federal and state responsibilities, while placing a number of precise limits on the permissible level of federal expenditures. Thus, Section 226(a) of the Act, along with its implementing regulations, expressly required that site preparation for temporary housing be provided by the concerned State "without charge to the United States" (84 Stat. 1752). The contracts at issue here were consummated to implement this Section of the Act.

The "no-interest rule" urged by petitioner, however, is flatly inconsistent with the specific apportionment of costs undertaken by Congress in Section 226(a). The real value of the State's payment for the services performed by the Corps obviously is diminished by delay in receipt. As a result, if the State escapes liability for interest, the United States will have contributed a substantial subsidy towards West Virginia's site preparation. In these circumstances, West Virginia hardly could claim to have completed its site preparation responsibilities "with-

out charge" to the Federal Government—or even to have recompensed the United States for any portion of the cost, if the time value of money is properly considered (since accumulated interest now exceeds the principal). Similarly, if local liability rules applied in actions like this one, the Federal Government would effectively subsidize some States while charging the others full freight. That sort of disuniformity plainly would be inappropriate in an area where evenhanded treatment is essential.

2. Even apart from its inconsistency with the federal program that gave rise to the contracts here, the nature of the state rule that petitioner seeks to apply makes its application in this case inappropriate. The State's "no-interest rule," like identical rules often applied to benefit other governmental entities, is nothing more than an element of the State's sovereign immunity. And while petitioner insists that use of this rule is necessary to accord due respect to the State's place in the constitutional structure, the Court has made it quite clear that constitutional values are *not* furthered by the assertion of a State's sovereign immunity against the Federal Government. Indeed, the States are deemed to have waived their sovereign immunity vis-a-vis the United States at the time that they were "admitted into the Union upon an equal footing in all respects with the other States." *United States* v. *Texas*, 143 U.S. 621, 646 (1892). As a general matter, then, there are no legitimate state interests that compel federal courts to refer to state sovereign immunity rules—or that make use of those rules presumptively appropriate—in actions brought by the United States.

This is not to say, of course, that there are no circumstances in which state "no-interest rules" might be relevant in cases governed by federal law. In

Board of County Commissioners v. *United States*, 308 U.S. 343, 351 (1939), the Court—while ultimately applying the federal interest rule—indicated that federal courts, in appropriate cases, may fashion interest rules with a "due regard" for local law. And in *United States* v. *North Carolina*, 136 U.S. 211 (1890), the Court applied this principle, looking to state law in holding that postmaturity interest was unavailable on state bonds purchased by the United States.

North Carolina, however, also illustrates the limits on the applicability of state law. The bonds at issue in that case had been purchased by the United States as part of a commercial transaction in the ordinary marketplace; the State's interest in the uniform administration of its bond program dictated use of a single state interest rule in suits involving attempts to collect on those bonds. Here, in contrast, the claim for interest does not grow out of an ordinary commercial relationship or affect the administration of a state program. Petitioner thus has no interest in the use of state law apart from its interest in asserting sovereign immunity. And with the principle of *North Carolina* inapplicable, there is no reason in this case to depart from the Court's usual approach of applying a federal rule to determine liability for interest.

3. Under the federal rule, prejudgment interest is awarded in contract actions for a sum certain as a matter of course. While interest may be denied in extraordinary cases where considerations of equity make an award inappropriate, this manifestly is not such a case. The United States made the expenditures that gave rise to this suit upon the express request of the State, after receiving repeated assurances that the State would assume financial respon-

sibility for the Corps' site preparation activities. The Corps performed the requested work expeditiously and satisfactorily. The United States made prompt and repeated demands for payment. Indeed, the Federal Government spent more than $30 million to relieve the effects of the Buffalo and Gilbert Creek Disasters, almost ten times the amount that the Corps sought to collect from the State in this suit. The Corps' attempt to be made whole for the relatively small portion of this expenditure devoted to activities that were the State's responsibility from the outset hardly can be deemed inequitable.

ARGUMENT

THE COURT OF APPEALS CORRECTLY AWARDED PREJUDGMENT INTEREST AGAINST PETITIONER

A. The Availability Of Prejudgment Interest In A Contract Action Brought By The United States Is A Matter Of Federal Law

The basic principles governing the controversy in this case are straightforward and well-established. This Court has long held that the interpretation of contracts "through which the United States is exercising its constitutional functions," as well as "the rights and obligations of the parties" to such contracts, are matters of federal law. *United States* v. *Allegheny County*, 322 U.S. 174, 183 (1944). Because such contracts are "entered into pursuant to authority conferred by federal statute and, ultimately, by the Constitution" (*United States* v. *Seckinger*, 397 U.S. 203, 209-210 (1970) (footnote omitted)), "the Constitution or Acts of Congress 'require' otherwise than that state law govern of its own force." *United States* v. *Little Lake Misere*

Land Co., 412 U.S. 580, 592-593 (1973). See *United States* v. *Kimbell Foods, Inc.*, 440 U.S. 715, 726-727 (1979); *United States* v. *Standard Oil Co.*, 332 U.S. 301, 305-310 (1947); *Clearfield Trust Co.* v. *United States*, 318 U.S. 363, 366-367 (1943). Petitioner seemingly accepts this fundamental proposition (see Br. 41).

It is equally clear—as petitioner also at least implicitly acknowledges (Br. 16)—that the availability of prejudgment interest in contract actions brought by the United States generally is determined by the application of federal rules, rather than through the incorporation into federal law of the state rule of decision. As the Court has explained:

> [T]he interest to be recovered as damages for delayed payment of a contractual obligation to the United States is not controlled by state statute or local common law. In the absence of an applicable federal statute, it is for the federal courts to determine, *according to their own criteria*, the appropriate measure of damage, expressed in terms of interest, for non-payment of the amount found to be due.

Royal Indemnity Co. v. *United States*, 313 U.S. 289, 296 (1941) (emphasis added). See *Rodgers* v. *United States*, 332 U.S. 371, 373 (1947). The question here is whether this otherwise general principle is wholly inapplicable when the defendant in the government's contract action is a State.

B. The *Clearfield Trust* Doctrine Requires Application Of A Federal Rule Of Prejudgment Interest In This Case

1. In answering this question, petitioner insists that federal courts must look to the state law governing the availability of interest when a State is the

defendant in the Federal Government's contract action. The validity of this contention, as petitioner seems to recognize (see Br. 28-29, 41), turns on an application of what has come to be known as the *Clearfield Trust* doctrine. In that case, and in a series of subsequent decisions, the Court set out the criteria that determine whether the federal courts should borrow state standards rather than develop their own rules of decision in cases governed by federal law.

Thus, when application of state rules either would disrupt necessary uniformity in the administration of federal programs or "would frustrate specific objectives of the federal programs," the Court has concluded that federal courts "must fashion special rules solicitous of those federal interests." *Kimbell Foods*, 440 U.S. at 728 (footnote omitted). Conversely, courts may take into account "the extent to which application of a federal rule would disrupt commercial relationships predicated on state law." *Id.* at 729 (footnote omitted); see *id.* at 739-740; *United States* v. *Brosnan*, 363 U.S. 237, 242 (1960). Courts also may gauge the "state's interest in the preservation of its control over local interests, particularly traditional interests such as family law and real property transactions." *Georgia Power Co.* v. *54.20 Acres of Land*, 563 F.2d 1178, 1185-1190 (5th Cir 1977) (Wisdom, J.), cert. denied, 440 U.S. 907 (1979). See generally *Little Lake Misere Land Co.*, 412 U.S. at 595. In this case, each of these factors supports the conclusion that the federal interest rule, and not the law of West Virginia, should apply. Together, they compel that conclusion.

2. At the outset, the first set of *Clearfield Trust* considerations—the nature of the federal interest—is itself dispositive. Petitioner of course is correct in

stating (Br. 19-20, 39) that the Disaster Relief Act was intended to provide assistance to the States. But the Act plainly was not, as petitioner seems to suggest (Br. 31), intended to make the Federal Government responsible for assuming all of the costs of combatting a disaster. Instead, it was in large part intended to assist the States in "carrying out *their* responsibilities" (§ 101(b), 84 Stat. 1745 (emphasis added)) by "coordinat[ing] disaster relief and recovery efforts of all appropriate Federal, State and local authorities." S. Rep. 91-1157, 91st Cong., 2d Sess. 2 (1970); see *id.* at 25. The Act thus put great weight on the formulation of state disaster relief plans. See § 206, 84 Stat. 1749. And the Act's implementing regulations mandated the commitment of a significant level of state funds prior to the expenditure of any federal resources on disaster relief. 32 C.F.R. 1710.7(a) (1973).

The Act, moreover, clearly divided federal and state responsibilities. In a number of areas, it placed precise limits on the permissible level of federal expenditures. See § 203(a)(4), 84 Stat. 1747; § 252(a) and (b), 84 Stat. 1757. Cf. § 224(b), 84 Stat. 1751. And in Section 226(a), the provision of the Act that is controlling here, Congress directed that site preparation for temporary housing be provided by the State "without charge to the United States" (84 Stat. 1752). There is no reason to doubt that Congress meant this limitation to be read literally. See H.R. Conf. Rep. 91-1752, 91st Cong., 2d Sess. 26 (1970); S. Rep. 91-1157, *supra*, at 16, 29; H.R. Rep. 91-1524, 91st Cong., 2d Sess. 11 (1970). To the contrary, the regulations implementing Section 226(a) emphasized that "[a]ny mobile home or readily fabricated dwelling shall be placed on a developed site, complete with necessary improvements and utilities to the location

of each such dwelling *as provided without charge to the Federal Government by State or local government*"; the regulations further specified that "the Federal responsibility *shall be limited to connection costs* to the furnished utilities." Indeed, the implementing regulations made a State's failure to perform adequate site preparation "a basis for rejection of such sites." 32 C.F.R. 1710.13(c)(5) (1973) (emphasis added).[7]

The contracts at issue in this case were consummated to implement Section 226(a) of the Act. The "no-interest rule" contended for by petitioner, however, is flatly inconsistent with the specific apportionment of costs undertaken by Congress in that Section. The real value of the State's payment for the services performed by the Corps obviously is diminished by delay in receipt; prejudgment interest accordingly is necessary to make the United States whole, and to put it "in as good a position as [it] would have been in" had the State paid for the services promptly. *General Motors Corp.* v. *Devex Corp.*, 461 U.S. 648, 655-656 (1983). Thus, unless interest is provided to compensate the United States for the "loss of value due to delay" (*Library of Congress* v. *Shaw*, No. 85-54 (July 1, 1986), slip op. 12 n.7), the Federal Government will have contributed a substantial subsidy towards West Virginia's site preparation. This effect is graphically demonstrated by the record here, where

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[7] Section 226(a) and its implementing regulations authorized federal authorities to reject the sites proffered by the State and to perform site preparation work elsewhere at federal expense "[i]f the Regional Director [of the Office of Emergency Preparedness] determine[d] it [was] in the public interest to use more economical and accessible sites" (32 C.F.R. 1710.13(c)(5) (1973); see 84 Stat. 1752). No such determination was made in this case, however; the sites improved by the Corps were the ones chosen by the State.

the length of the State's delay prior to payment, in combination with the effects of inflation, means that the interest award actually is larger than the principal amount in dispute. If the State escapes liability for interest, it hardly can claim to have completed its site preparation responsibilities "without charge" to the United States—or even to have recompensed the United States for any portion of the cost (if the time value of money is properly considered). The resulting incentive for any future delays in state payments, including the accomplishment of delay by prolonging litigation, would be obvious. Cf. *General Motors Corp.*, 461 U.S. at 656 n.10.

In this setting, where "the rights of the United States are at issue in a contract to which it is a party and 'the issue's outcome bears some relationship to a federal program, no rule may be applied which would not be wholly in accord with that program.'" *Little Lake Misere Land Co.*, 412 U.S. at 604 (quoting Mishkin, *The Variousness of "Federal Law": Competence and Discretion in the Choice of National and State Rules for Decision*, 105 U. Pa. L. Rev. 797, 805-806 (1957)). See generally Friendly, *In Praise of Erie—and of the New Federal Common Law*, 39 N.Y.U.L. Rev. 383, 410 (1964). The West Virginia rule plainly fails to satisfy this standard. As a result, even if petitioner is correct in asserting (Br. 29, 32, 41) that the federal interest rule may be used against a State only when required by clear congressional policy—and, as we explain below (pages 21-28, *infra*), that proposition is doubtful—the federal rule should be applied in this case.[8]

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[8] Petitioner's argument (Br. 21-23) that an award of interest is barred by *Pennhurst State School & Hospital* v. *Halderman*, 451 U.S. 1 (1981), is entirely without merit.

Petitioner's contention founders as well on the requirement that a federal rule be formulated "where uniformity is indicated as more appropriate." *Standard Oil*, 332 U.S. at 309. The agreements at issue here were not isolated commercial contracts; they facilitated a nationwide program in which Congress imposed generous—but precise—limits on federal disaster contributions. If local liability rules applied in actions like this one, the Federal Government would effectively subsidize some States while charging the others full freight. Such a result plainly would be inappropriate in an area where evenhanded treatment is essential.

Pennhurst stands for the proposition that new or unanticipated conditions cannot be attached to a state's receipt of federal grant funds when doing so "would * * * impose[] a 'massive' and 'largely indeterminate' financial obligation on the States." *Bennett* v. *Kentucky Department of Education*, No. 83-1798 (Mar. 19, 1985), slip op. 8 (quoting *Pennhurst*, 451 U.S. at 24). See *Bell* v. *New Jersey*, 461 U.S. 773, 790 n.17 (1983); *Pennhurst*, 451 U.S. at 17. *Pennhurst* thus insisted that state obligations under federal grant programs be interpreted in a quasi-contractual manner. Here, of course, the State's obligation *is* a contract, which the court of appeals subjected to the usual rules of contract interpretation. In any event, whether the State looked either to its contractual undertaking to reimburse the United States or to its obligation under Section 226(a) to hold the United States "without charge," it had reason to anticipate its liability for interest: interest is an expected part of a debt liability, rather than an unanticipated term attached to receipt of funds. Cf. *Kentucky Department of Education*, slip op. 8 (emphasis in original) ("*Pennhurst* does not suggest that the Federal Government may recover misused *federal* funds only if every improper expenditure has been specifically identified and proscribed in advance"); *Bell*, 461 U.S. at 790 n.17 (contrasting the imposition of new conditions on a grant recipient "with the remedies available against a noncomplying State").

2. Even apart from its inconsistency with the federal program that gave rise to the contracts in this case, the nature of the state "no-interest rule" that petitioner seeks to apply makes the use of that rule "singularly inappropriate here." *Clearfield Trust*, 318 U.S. at 367. This is not a case in which widespread public reliance and settled expectations would be disrupted by disregarding the state rule of decision. Similarly, the proffered state rule does not regulate private relationships involving "inten[sively] local interests" such as "family and family-property arrangements." *United States* v. *Yazell*, 382 U.S. 341, 349, 352 (1966). Instead, the state "no-interest" law proffered by petitioner is a narrow rule that, like identical rules often applied to benefit other governmental entities, is nothing more than an element of the State's sovereign immunity. See *State ex rel. State Building Comm'n* v. *Moore*, 155 W. Va. 212, 236-237, 184 S.E.2d 94, 108 (1971); *Guaranty Trust Co.* v. *West Virginia Turnpike Comm'n*, 144 W. Va. 266, 275-276, 107 S.E.2d 792, 798 (1959). See generally, *Shaw*, slip op. 5; *Miller* v. *Robertson*, 266 U.S. 243, 257 (1924); *United States* v. *Sherman*, 98 U.S. 565, 568 (1878); Note, *Interest in Judgments Against the Federal Government: The Need for Full Compensation*, 91 Yale L.J. 297, 302-303 (1981).[9]

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[9] This is not a case where the State is seeking to apply either its general contract law or general rules regarding the availability of interest; in the absence of the sovereign immunity barrier that petitioner seeks to apply here, state law makes prejudgment interest freely available in West Virginia. See, *e.g.*, *Bell* v. *Inland Mutual Insurance Co.*, 332 S.E.2d 127, 137 (W. Va. 1985), cert. denied, No. 85-380 (Nov. 4, 1985); *Kirk* v. *Pineville Mobile Homes, Inc.*, 310 S.E.2d 210 (W. Va. 1983); *Ilosky* v. *Michelin Tire Corp.*, 307 S.E.2d 603, 615 (W. Va. 1983). See also W. Va. Code § 56-6-27 (1966).

a. Petitioner insists (Br. 17) that use of this sovereign immunity-based rule is necessary to accord due respect to the State's sovereign place in the constitutional structure. Almost a century ago, however, the Court made it quite clear that constitutional values are *not* furthered by the assertion of a State's sovereign immunity against the United States. This conclusion, the Court emphasized, "does no violence to the inherent nature of sovereignty." *United States* v. *Texas*, 143 U.S. 621, 646 (1892). To the contrary, the States are deemed to have waived their sovereign immunity as a defense in actions brought by the United States at the time that they were "admitted into the Union upon an equal footing in all respects with the other States" (*ibid.*). See *United States* v. *Louisiana*, 339 U.S. 699, 701-702 (1950); *Kansas* v. *United States*, 204 U.S. 331, 342 (1907); *United States* v. *California*, 328 F.2d 729, 732 (9th Cir.), cert. denied, 379 U.S. 817 (1964).

As a general matter, then, there are no legitimate state interests that compel federal courts to refer to state sovereign immunity rules—or that make use of those rules presumptively appropriate—in actions brought by the United States. This certainly is no less true of subsidiary aspects of a State's sovereign immunity, such as the "no-interest rule" at issue here, than it is of the State's basic immunity from suit. The Court has held, for example, that others of the normal incidents of sovereignty, such as exemption from statutes of limitations, do not attach to the States in litigation with the Federal Government. See, *e.g.*, *Block* v. *North Dakota*, 461 U.S. 273, 288-289 (1983). Compare *United States* v. *Minnesota*, 270 U.S. 181, 196 (1926) (*state* statutes of limitations do not bar suits by the United States). See also *Block*, 461 U.S. at 289 n.25 (citation omitted) ("this Court has never

'recognized sovereign prerogatives of other governmental units as bars to defenses asserted by the United States' ").[10] And the courts of appeals have had no difficulty concluding that, absent contrary direction from Congress, *federal* common law rules relating to the award of interest are fully applicable in suits by the Federal Government against the States. See *Pennsylvania* v. *United States*, 781 F.2d 334, 341 (3d Cir. 1986); *United States* v. *California State Board of Equalization*, 650 F.2d 1127, 1132 (9th Cir. 1981), aff'd, 456 U.S. 901 (1982).[11] Compare *United States* v. *California*, 655 F.2d 914, 918-919 (9th Cir.

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[10] The courts also may apply appropriate ancillary remedies against the States, such as an accounting, when necessary to provide complete relief to the United States. See *United States* v. *Louisiana*, 339 U.S. 699, 701, 706 (1950).

[11] The court of appeals in *Pennsylvania* v. *United States*, *supra*, ultimately held that the collection of interest from Pennsylvania was foreclosed by the Debt Collection Act of 1982, 31 U.S.C. (& Supp. II) 3701 *et seq.*, a statute that is inapplicable here because the contracts giving rise to petitioner's liability were consummated prior to that Act's effective date. See 31 U.S.C. 3717(g)(2). Petitioner nevertheless suggests (Br. 23-24 & n.3) that *Pennsylvania* and the Debt Collection Act both reflect "the national policy of not awarding prejudgment interest against states" (Br. 24 n.3). In fact, however, the court in *Pennsylvania* concluded that nonstatutory federal law—which concededly is controlling in this case—provides " 'that when the damages resulting from a breach of contract are ascertainable with mathematical precision, prejudgment interest is awardable as of right' "; the court added that "[a] similar rule applies in claims by the United States against state entities" (781 F.2d at 341). The court held interest unavailable only because it concluded that the Debt Collection Act "*abrogate*[*d*] the common law" (*id.* at 341 n.10 (emphasis added); see *id.* at 342). See also *Perales* v. *United States*, 598 F. Supp. 19 (S.D.N.Y.), aff'd, 751 F.2d 95 (2d Cir. 1984). And even this conclusion (which, given the

1980) (United States required to satisfy state claim filing provisions, because satisfaction of those provisions was an element of the cause of action rather than of the State's sovereign immunity). "[I]n light of our Constitution, which makes the federal law ultimately supreme, these holdings should not have been surprising." *Block*, 461 U.S. at 289 (footnote omitted).

Nor, despite petitioner's assertions to the contrary (Br. 35-36), is there anything anomalous in recognizing both the Federal Government's ability to obtain interest from the States and its right to assert sovereign immunity as a defense to claims for interest *by* the States. The sovereign immunity of the state and federal governments is not symmetrical; "[i]t does not follow that because a State may be sued by the United States without its consent, therefore the United States may be sued by a State without its consent. Public policy forbids that conclusion." *Kansas* v. *United States*, 204 U.S. at 342. The States —"like all other entities" (*Block*, 461 U.S. at 280)— thus may not bring an action against the Federal Government "in the absence of an express waiver of [sovereign] immunity by Congress." See *California* v. *Arizona*, 440 U.S. 59, 61-62, 65 (1979); *Minnesota* v. *United States*, 305 U.S. 382, 387 (1939); *United States* v. *Minnesota*, 270 U.S. at 195. Because immunity from liability for interest is an aspect of a government's sovereign immunity, the asymmetry in

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inapplicability of the Debt Collection Act here, is of no help to petitioner), is open to question: the Comptroller General and the Justice Department, the agencies charged with administering the Debt Collection Act, have promulgated joint regulations interpreting it to preserve the Federal Government's common law authority to seek interest from the states. 4 C.F.R. 102.13(i).

the application of federal and state "no-interest rules" is a necessary consequence of federal supremacy.

b. This is not to say, of course, that there are no circumstances in which state or local "no-interest rules" might be relevant in cases governed by federal law. In *Board of County Commissioners* v. *United States*, 308 U.S. 343 (1939), the Court—while emphasizing that "whatever [interest] rule we fashion is ultimately attributable to the Constitution, treaties or statutes of the United States, and does not owe its authority to the law-making agencies of [a State]" (*id.* at 349-350)— recognized that the federal courts, in fashioning interest rules, are "free to take into account appropriate considerations of 'public convenience,'" among a "due regard for local institutions and local interests" (*id.* at 351).[12] And the Court

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[12] Petitioner, however, places more weight on *Board of County Commissioners* than that case can bear. Petitioner's assertions to the contrary (Br. 28-29) notwithstanding, the Court did not apply a state "no-interest rule" in that case. While the Court discussed the propriety of looking to state law (308 U.S. at 351-352), it ultimately applied the federal common law interest rule, holding on the facts before it that an award of interest against the local government defendant would be inequitable because the United States delayed unreasonably in bringing suit (*id.* at 352-353). See *General Motors Corp.*, 461 U.S. at 657 n.11 (citing *Board of County Commissioners* for the proposition that interest may be unavailable when the delay in bringing suit is unreasonable). Nor does even the reasoning of *Board of County Commissioners* indicate whether state "no-interest rules" should be used in contract actions brought by the United States (see Pet. Br. 28). That case involved a suit initiated by the United States on behalf of an Indian whose land had been improperly subjected to local taxes (see 308 U.S. at 348-349). In considering the availability of interest, the Court found it relevant that the rights asserted by the United States were those of

applied this principle in *United States* v. *North Carolina*, 136 U.S. 211 (1890), holding that grounds of "public convenience" (*id.* at 216) dictated the withholding of postmaturity interest on state bonds purchased by the United States. See *Board of County Commissioners*, 308 U.S. at 352.

North Carolina, however, also illustrates the limits on this principle. That case involved the Federal Government's claim for postmaturity interest on bonds that it had purchased from North Carolina in the ordinary marketplace. See 136 U.S. at 215. The United States had assumed the status of a commercial enterprise in the transaction; its purchase was no different from purchases made by private entities, and the bonds it obtained were in fact freely transferable to other parties (see *id.* at 221). In these circumstances, the State's interest in the uniform administration of its bond program—in not, for example, having its liability on a given, transferable instrument turn on the identity of the party holding the instrument at the time of suit—dictated use of a single state interest rule. Cf. *Clearfield Trust*, 318 U.S. at

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an individual rather than of the Federal government, expressing its "concern[] with the interplay between the rights of Indians under federal guardianship and the local repercussion of those rights" (*id.* at 351). See *id.* at 350-351; *id.* at 353-354 (opinion of Black, J.) (footnote omitted) (noting that congressional "policy has progressively subjected Indians to the laws under which all other citizens must live in the Indians' States of residence," so that "[t]he failure of Congress to stipulate that a State—as here—must pay interest to an Indian when the State law permits interest to no one, is entirely consistent with the congressional policy of steadily extending the operation of the States' laws over their resident Indians"). The principles announced in *Board of County Commissioners* accordingly provide little guidance for suits brought by the federal government on its own behalf.

367 (noting the federal government's interest in uniform treatment of its commercial paper). The Court therefore looked to North Carolina law in holding interest unavailable (136 U.S. at 218-219, 221-222).[13]

Here, in contrast, the claim for interest does not grow out of an ordinary commercial relationship or affect the administration of a state program; it arises, instead, "in the context of a specific [federal] * * * statutory provision." *Little Lake Misere Land Co.*, 412 U.S. at 592. West Virginia thus has no interest in the use of state law apart from its interest in asserting sovereign immunity.[14] As both courts below recognized, the decision in *North Carolina*

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[13] The Court also cited general law on sovereign immunity, including cases recognizing the Federal Government's immunity from liability for interest (136 U.S. at 216-218), in making the observation that interest "is not to be awarded against a sovereign government" (*id.* at 216; see *id.* at 221). To the extent that this analysis was intended to recognize the assertion of a State's sovereign immunity against the United States, it cannot be reconciled with this Court's subsequent decisions. See pages 22-24, *supra*.

[14] In contrast, *United States* v. *Yazell*, *supra*, upon which petitioner largely relies (Br. 29-33), involved the assertion of state coverture rules as a defense to the Federal Government's attempts to collect on a Small Business Administration loan. These rules, the Court explained, involved "the inten-[sively] local interests of family property and the protection * * * of married women" (382 U.S. at 349; see *id.* at 352, 353). Indeed, the contract at issue in *Yazell* was "negotiated with specific reference to [State] law" (*id.* at 345-346); when it entered into the contract, the Federal Government evidently had no expectation that the coverture defense would be inapplicable (*id.* at 347-348). The United States in *Yazell* —like petitioner here—thus was attempting to avoid the consequences of its bargain.

accordingly is inapposite here.[15] And with the principle of *North Carolina* inapplicable, there is no reason in this case to depart from the Court's usual approach of applying a federal rule to determine liability for interest.

C. Under The Federal Rule, Petitioner Is Liable For Prejudgment Interest

The federal rule on the availability of prejudgment interest is grounded on "the historic judicial principle that one for whose financial advantage an obligation was assumed or imposed, and who has suffered actual money damages by another's breach of that obligation, should be fairly compensated for the loss thereby sustained." *Rodgers*, 332 U.S. at 373. Because prejudgment interest is "a component of full compensation" (*General Motors Corp.*, 461 U.S. at 656 n.10), it generally is awarded in federal contract actions as a matter of course, at least where the amount due is liquidated or readily ascertainable. See, *e.g.*, *Rodgers*, 332 U.S. at 373; *Royal Indemnity Co.*, 313 U.S. at 296-297; *Miller*, 266 U.S. at 257; *Pennsylvania*, 781 F.2d at 341; *United States* v. *Dollar Rent A Car Systems, Inc.*, 712 F.2d 938, 941 (4th Cir. 1983); *Bituminous Casualty Corp.* v. *Lynn*, 503 F.2d 636, 645 (6th Cir. 1974); *United States* v. *L.N. White & Co.*, 359 F.2d 703, 714 (2d Cir. 1966). See generally *General Motors Corp.*, 461 U.S. at 655-656.

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[15] The court of appeals noted that "[i]t would have been unfair and anomalous [in *North Carolina*] * * * to have allowed interest to the United States on its small ownership of bonds, acquired * * * in an open bond market, when, under the North Carolina law, all other bond holders would have been barred from recovery of interest" (Pet. App. D15; see also *id.* at C12-C13).

The claim here, which seeks interest from the date that itemized bills for a sum certain were submitted to the State (see Pet. App. D25), plainly falls into this category.

It is true, as petitioner suggests (Br. 34), that interest may be denied even under the federal rule in extraordinary cases where considerations of equity make an award inappropriate. See *General Motors Corp.*, 461 U.S. at 656-657; *Board of County Commissioners*, 308 U.S. at 350; *Ambromovage* v. *United Mine Workers*, 726 F.2d 972, 981-982 (3d Cir. 1984). But this manifestly is not such a case. Here, the United States made the expenditures that gave rise to this suit upon the express request of the State, after receiving repeated assurances that the State would assume financial responsibility for the Corps' site preparation activities. State officials acknowledged that the requested work was performed expeditiously and satisfactorily; Governor Moore actually commended the Corps for " 'providing housing for the thousands of homeless' " at his request (Pet. App. B21-B22). And the United States did not sleep on its rights: it billed the State promptly, made repeated attempts to collect, and brought suit—after delaying at the request of the State (see *id.* at D8)—when it became apparent that the State had no intention of meeting its obligations (see *id.* at B26-B29).

In arguing the equities, petitioner disregards all of these considerations. Its contention, instead, essentially reduces to the claim that the funds in dispute mean more to West Virginia than they do to the United States (see Pet. Br. 36-38).[16] Even if accurate,

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[16] Petitioner also suggests (Br. 35-36) that it is inequitable for the United States to seek interest from the States when the Federal Government is not liable for interest to the

however,[17] this assertion is wholly irrelevant. The relative size of the parties never has been held to bear on the propriety of an award of interest. Indeed, were the rule otherwise, the United States—as well as the States, in virtually all of their litigation—never would be entitled to interest. Instead, courts may appropriately withhold interest on equitable grounds only when the improper behavior of the claimant or the unusual nature of the claim indicates that the award of full compensation would be inappropriate. See generally, *General Motors Corp.*, 461 U.S. at 656-657 & n.11; *Board of County Commissioners*, 308 U.S. at 352-353. That is not the case here.

Petitioner also is incorrect in suggesting that an award of interest would be inconsistent with the purposes of the Disaster Relief Act. As explained above (pages 16-20, *supra*), the Act specifically allocated

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States. As we explain above (pages 24-25, *supra*), however, this situation is a function of the United States' sovereign immunity. In any event, if a government's immunity to claims for interest by the other party to the lawsuit made it "inequitable" within the meaning of the federal rule for that government to receive interest, neither the United States nor the States ever would obtain interest in suits against private parties. That plainly is not the law. We also note that the United States has obligated itself to make prompt payments on its contracts (see the Prompt Payments Act, 31 U.S.C. (& Supp. II) 3901 *et seq.*), and the provide interest when it is found liable for disputed contract amounts (see the Contract Disputes Act, 41 U.S.C. 611; see also 31 U.S.C. (& Supp. II) 3902).

[17] As the court of appeals noted, "the United States has been without the money due it by the State and, because of deficits in its revenue over expenditures, the United States during the period of the State's delinquency has been forced to borrow at high rates of interest" (Pet. App. D21-D22).

certain costs to the States; because Congress intended the States to hold the United States harmless for the costs of site preparation, the congressional purpose plainly would be furthered by awarding interest on a State's reimbursement of federal site preparation expenditures. In any event, the United States spent more than $30 million to relieve the effects of the Buffalo and Gilbert Creek Disasters (Pet. App. D19), almost 10 times the amount that the Corps sought to collect from the State in this suit.[18] The Corps' attempt to be made whole for the relatively small portion of its expenditure devoted to activities that were the State's responsibility from the outset can hardly be deemed inconsistent with congressional intent. In these circumstances, the court of appeals' correctly concluded that it is "manifest beyond any doubt that the equities weigh overwhelmingly in favor of the United States" (*id.* at D22).

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[18] In contrast, as the court of appeals explained, West Virginia "had not, prior to this suit, made any contribution" (Pet. App. D19). To the contrary, the State received approximately $1 million in settlement of a suit against a private firm for damages caused by collapse of the Buffalo Creek coal dam (*id.* at D21).

CONCLUSION

The judgment of the court of appeals should be affirmed.

Respectfully submitted.

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